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STATE OF WASHINGTON  
4/9/2019  
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NO. 966435

IN THE SUPREME COURT FOR WASHINGTON STATE

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STATE OF WASHINGTON,

Petitioner,

v.

MATTHEW THOMAS SCHWARTZ

Respondent.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KLIKITAT COUNTY

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SUPPLEMENTAL RESPONDENT'S BRIEF

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## **I. SUPPLEMENTAL ISSUE PRESENTED**

Whether the 2014 felony conviction was the correct trigger date, because it was the last release from custody pursuant a felony conviction?

## **II. SUPPLEMENTAL FACTS**

This brief does not have any facts to supplement those facts the court of appeals already presented in State v. Schwartz, 6 Wash.App.2d 151, 153-154, 429 P.3d 1080 (2018), review granted, 435 P.3d 287 (2019). For that reason, we rely on and adopt those facts, here.

## **III. SUPPLEMENTAL ARGUMENT**

THE COURT OF APPEALS USED THE CORRECT TRIGGER DATES TO DETERMINE WHICH CONVICTIONS SHOULD NOT HAVE BEEN INCLUDED IN THE OFFENDER SCORE.

Here, the State maintains the court of appeals did not consider whether the correct trigger clause was actually Mr. Schwartz's 2014 conviction for possession of methamphetamine, because it was the last release from custody pursuant a felony conviction. But, the court of appeals did consider the argument.

To recapitulate, the court of appeals considered the following as Mr. Schwartz's criminal history:

<b>SENTENCING DATE</b>	<b>OFFENSE</b>	<b>FELONY CLASS</b>
7/10/1993	Second-degree Assault w/Sexual Motivation	Class A
7/22/1997	Forgery	Class C
9/04/2001	Fail to Register as a Sex Offender	Class C

11/03/2014	VUCSA - Possession of Methamphetamine	Class C
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It concluded “the wash-out period need not immediately follow the prior conviction. Any five-year period will do, so long as it follows the date of entry of judgment and the last date of release from confinement for the prior offense.”

State v. Schwartz, 6 Wash.App.2d 151, 158, 429 P.3d 1080 (2018), review granted, 435 P.3d 287 (2019).

The court of appeals recognized most prior convictions will not be counted in a person’s offender score, if a person has spent a sufficient period in the community without committing any crimes that result in conviction. This period begins to run from the date of the judgment and sentence or the last date of release from confinement. RCW 9.94A.525(2)(c); In re Pers. Restraint of Nichols, 120 Wash.App. 425, 432, 85 P.3d 955 (2004); State v. Ervin, 169 Wn.2d 815, 821, 239 P.3d 354 (2010).

RCW 9.94A.525(2)(c), the relevant statute, identifies the “trigger clause as the beginning of the five-year period, and sets the substantive requirements a person must satisfy during the five-year period, in order for certain crimes to be washed out of the person’s offender score. In re Pers. Restraint of Nichols, 120 Wash.App. at 432; State v. Ervin, 169 Wn.2d at 821. It provides in pertinent part,

[C]lass C prior felony convictions ... shall not be included in the offender score if, since the last date of release from confinement ... **pursuant to a felony conviction**, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that

subsequently results in a conviction. (Emphasis added)

RCW 9.94A.525(2)(c).

Here, the court of appeals interpreted the emphasized phrase, “**pursuant to a felony conviction**,” to mean any such conviction. This interpretation gives effect to the statute’s plain meaning. State, Dep’t of Ecology v. Campbell & Gwinn, L.L.C., 146 Wash. 2d 1, 9–10, 43 P.3d 4, 9 (2002). If the statute is interpreted as the State maintains it should, most prior convictions would be counted in a person’s offender score and only the most recent prior conviction would “trigger” washout, which would make the intent of washout superfluous.

#### **IV. CONCLUSION**

Given that, we ask this Court to uphold the court of appeals’ decision, in this case overall, and to specifically find the court of appeals was correct when it did not limit the “trigger” date to the 2014 conviction for possession of methamphetamine, when it determined which convictions washed-out of Mr. Schwartz’s offender score.

Submitted this 8<sup>th</sup> day of April, 2019.

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## DECLARATION OF SERVICE

April 8, 2019

Supreme Court Case No.: 966435

Case Name: *State of Washington v. Matthew Thomas Schwartz*

I declare under penalty and perjury of the laws of Washington State that on **Monday, April 8, 2019**, I filed the attached supplemental appellant's brief with the Supreme Court and served copies to:

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